

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 982\*  
PROPOSED COMMITTEE SUBSTITUTE S982-PCS55394-RG-29

Short Title: Small Business Assistance Fund.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT THE SMALL BUSINESS ASSISTANCE ACT OF 2009 AND TO ESTABLISH THE SMALL BUSINESS JOBS PRESERVATION FUND IN THE OFFICE OF STATE BUDGET AND MANAGEMENT WITH RELATED PROGRAMS COORDINATED BY A TECHNICAL ASSISTANCE PROVIDER.

Whereas, North Carolina has historically provided assistance to small businesses after natural disasters; and

Whereas, North Carolina and the State's small businesses face an economic disaster of historic proportions; and

Whereas, unemployment approaches 15 percent in many North Carolina counties and may ultimately exceed 10 percent for the entire State; and

Whereas, small business accounts for more than half of all North Carolina jobs and more than 98 percent of its businesses; and

Whereas, small business has been especially hard hit by the global downturn and resulting shortage of available credit; and

Whereas, this shortage of credit has caused businesses to be closed in record numbers across North Carolina and rendered thousands more North Carolinians jobless every month; Now, therefore,

The General Assembly of North Carolina enacts:

**SECTION 1.** Part 2I of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 2I. ~~One North Carolina Small Business Program Assistance.~~

"Subpart A. One North Carolina Small Business Program."

**SECTION 2.** Part 2I of Article 10 of Chapter 143B of the General Statutes is amended by adding a new Subpart to read:

"Subpart B. Small Business Assistance Fund.

**"§ 143B-437.89. Establishment of fund; use of moneys; application for moneys from the fund; disbursal; repayment; inspections; rules; reports.**

(a) Fund Established. – A revolving, special revenue fund to be known as the Small Business Jobs Preservation and Emergency Assistance Fund is established in the Department of Commerce. This Fund shall be administered by the Department through the Small Business and Technology Development Center or any other entity as selected by the Secretary of Commerce. The Department shall be responsible for receipt and disbursement of all moneys as provided in this section. Interest earnings shall be credited to the Fund. The Fund consists of revenue



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1 resulting from funds appropriated by the State, repayments of principal of and interest on loans,  
2 fees, and other amounts received by the Department with respect to financial assistance  
3 provided by the Department, and any other public or private funds made available to the Fund.

4 (b) Department Authority; Loan Terms; Commission. – The Department may approve  
5 for disbursements of moneys in the Fund to small businesses in accordance with the provisions  
6 of this section. The Department in conjunction with a Small Business Advisory Commission  
7 (Commission) supported by the advice and counsel of the Small Business and Technology  
8 Development Center of any other professional entity as selected by the Secretary of Commerce,  
9 shall develop criteria, technical specifications, policies, and procedures to be used in  
10 determining whether the conditions of this section apply. The Commission shall be comprised  
11 of the Secretary of Commerce or the Secretary's designee; the President of the Community  
12 College System or the President's designee; a representative of The University of North  
13 Carolina General Administration; three members appointed by the Governor; three members  
14 appointed by the Lieutenant Governor; three members appointed by the President Pro Tempore  
15 of the Senate; and three members appointed by the Speaker of the House of Representatives. In  
16 addition to administering the Small Business Assistance Fund, the Commission shall receive  
17 comments regarding the needs and concerns of small businesses as they relate to matters of  
18 State. The Commission shall report to the Joint Legislative Commission on Governmental  
19 Operations annually.

20 As used in this section, "moneys" means a disbursement from the Fund in the form of a  
21 loan, or loan guarantee, and "small business" means a business whose annual receipts and  
22 number of full-time employees, combined with the annual receipts and full-time employees of  
23 all related persons, did not exceed one million dollars (\$1,000,000) or 100 full-time employees.  
24 No more than twenty percent (20%) of the Fund may be loaned to businesses in Article 3J Tier  
25 3 counties. The remainder of the Fund is reserved for businesses in Article 3J Tier 1 and Tier 2  
26 counties. The main priority of the Fund shall be to protect existing small business to enter into  
27 federal stimulus contracts. Priority also may be given to requests for loans or loan guarantees  
28 made by otherwise qualifying historically underutilized business. A small business may apply  
29 for a loan for: any legitimate business purposes, but may not be used to enhance executive pay,  
30 provide bonuses, or consolidate operations in a manner that reduces the existing workforce.  
31 Existing small businesses applying for assistance from the Fund must have a proven record of  
32 success and must demonstrate that but for the recent economic downturn, the business would  
33 not be in need of capital assistance.

34 (c) Eligible Purposes. – Moneys in the Fund shall be used for any of the following  
35 eligible purposes:

- 36 (1) To guarantee commercial loans.
- 37 (2) To provide emergency bridge loans where clear and apparent ability to repay  
38 has been established but credit remains unavailable.
- 39 (3) To lend for other purposes related to small business job preservation as  
40 approved or recommended by the Department.

41 (d) Application. – Any small business may apply for moneys from the Fund by  
42 submitting an application to the Department its designated loan administration resource. The  
43 application shall list each of the following:

- 44 (1) The proposed activities for which the moneys are to be used.
- 45 (2) The amount of moneys requested for these activities.
- 46 (3) Projections of the dollar amount of private investment that is expected to  
47 occur as a direct result of the proposed activities.
- 48 (4) An explanation of the nature of the private investment that will result from  
49 the proposed activities.
- 50 (5) A requirement for any reports, disclosures, or information required by this  
51 section or necessary for the Department to fulfill its duties under this section.

1           (6)   The total compensation received for the previous year from the small  
2           business and all related persons for each of the five highest-compensated  
3           employees of the small business.

4           (7)   Any additional or supplemental information required by the Department  
5           upon written request.

6           (e)   Determination. – The Department or its designee shall review an application  
7           submitted by a small business, determine whether the activities listed in the application are  
8           activities that are eligible for moneys from the Fund, and determine which applicants are  
9           selected to receive moneys from the Fund. A small business whose application is denied may  
10          file a new or amended application.

11          (f)   Limitation. – A small business that is selected for a loan may not receive moneys  
12          from the Fund pursuant to this section with an aggregate total of more than fifty thousand  
13          dollars (\$50,000). A small business selected for a loan guarantee may not receive a guarantee  
14          for a loan of more than one hundred thousand dollars (\$100,000).

15          (g)   Disbursements of Moneys. – The Department or its designee shall not disburse  
16          moneys for any loans until the small business has confirmed a method of repayment for the  
17          loan. The terms for repayment established for a given loan shall apply through the period of  
18          that loan. A small business that has been selected to receive moneys shall use the full amount of  
19          the moneys for the activities that were approved pursuant to subsection (b) of this section.  
20          Moneys are deemed used if the small business is legally committed to spend the moneys on the  
21          approved activities. For purposes of this section, approved activities do not include an increase  
22          in the total compensation of any employee identified in the application under subdivision (6) of  
23          subsection (d) of this section. A small business shall lose any moneys that have not been used  
24          within three years of being selected. These unused moneys shall be credited to the Fund. A  
25          small business that loses moneys pursuant to this subsection may file a new application. Any  
26          moneys repaid or credited to the Fund pursuant to this subsection shall be available to other  
27          applicants as long as the Fund exists.

28          (h)   Cost Report. – After activities financed in whole or in part pursuant to this section  
29          have been completed, the small business shall report the actual cost of the project to the  
30          Department. If the actual costs of the activities exceed the projected cost upon which the  
31          moneys were based, the small business may submit an application to the Department for  
32          additional moneys for the difference. If the actual costs of the activities are less than the  
33          projected cost, the small business shall arrange to pay the difference to the Fund according to  
34          terms set by the Department.

35          (i)   Inspection. – Inspection of a project for which moneys have been awarded may be  
36          performed by personnel of the Department or its designee. No person may be approved to  
37          perform an inspection who is an officer or employee of the small business to which the moneys  
38          were disbursed or who is an owner, officer, employee, or agent of a contractor or subcontractor  
39          engaged in the activities for which the moneys were disbursed.

40          (j)   Administration. – The Department or its designee may adopt, modify, and repeal  
41          rules establishing the procedures to be followed in the administration of this section and  
42          interpreting and applying the provisions of this section, as provided in the Administrative  
43          Procedure Act.

44          (k)   Legislative Reports. – The Department shall prepare and file on or before  
45          September 1 of each year with the Joint Legislative Commission on Governmental Operations  
46          and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning  
47          the allocation of moneys authorized by this section, including a separate listing of the moneys  
48          disbursed to historically underutilized businesses. The report shall set forth for the preceding  
49          fiscal year itemized and total allocations from the Fund. The Department shall also prepare a  
50          summary report of all allocations made from the Fund for each fiscal year; the total funds

1 received and allocations made; the total amount of moneys repaid to the Fund; and the total  
2 unallocated funds in the Fund.

3 Small businesses that have been selected to receive moneys from the Fund shall prepare and  
4 file a report that shall include the following information:

5 (1) The total amount of private funds that was committed and the amount that  
6 was invested in activities for which moneys from the Fund were made  
7 available during the preceding fiscal year.

8 (2) The total amount and character of moneys received from the Fund during the  
9 preceding fiscal year.

10 (3) The total amount of moneys repaid to the Fund during the preceding fiscal  
11 year.

12 (4) A description of how moneys from the Fund and funds from private  
13 investors were used during the preceding fiscal year.

14 (5) Details regarding the types of private investment created or stimulated, the  
15 dates of this activity, the amount of public money involved, and any other  
16 pertinent information, including any jobs created, businesses started, and  
17 number of jobs retained due to the approved activities."

18 **SECTION 3.** This act becomes effective July 1, 2009.